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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

June 23, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 05OD-132

Oahu

Amend prior Board Action of July 22, 2005, Item D-5, as amended- Cancellation of a Resolution Designating an Industrial Park; Cancellation of Governor's Executive Order No. 3892 to the Department of Land and Natural Resources for Industrial Park and Business Purposes; Set Aside to the Department of Transportation, Harbors Division for Maritime Purposes; and Issuance of a Management Right-of-Entry; Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:22 and 334.

REMARKS:

As background, the Land Board previously approved the designation of 45 acres of lands situated at Sand Island (which included the subject property, i.e. TMK: (1) 1-5-41:22 and 334, hereinafter "subject property" or "property") as an Industrial Park under the management and control of Land Division. Land Division intended that the development of the industrial park would be in accordance with the City and County of Honolulu's (hereinafter "County") subdivision standards and that all roadways and utility infrastructure serving the industrial park would be built to County standards. This would have allowed Land Division to dedicate the infrastructure and roads to the County, and upon acceptance, the County would then assume responsibility for the repair and maintenance of the infrastructure and roads in perpetuity. Subsequently, the Department of Transportation, Harbors Division (DOT) requested that the subject property be set aside to it for maritime purposes, explaining that there was an urgent need for container yard space by the shipping companies such as Matson and Horizon. DOT believed it could develop and subdivide the property at much greater speed than Land Division. Accordingly, at its meeting on July 22, 2005, under item D-5, the Land Board cancelled its prior approval of designating the subject property to be under the control and management of Land Division, and instead set aside the subject property to DOT for maritime purposes to be used by the shipping companies (see Exhibit "A").

DOT is now requesting the Land Board to amend its approval by:

1. Waiving the subdivision requirement for DOT;

2. Declaring that DOT was named the sole agency to which the set aside was approved; and
3. Approving an 8-year lease with Matson Terminal, Inc., subject to the execution of the subject set aside.

Staff notes that obtaining a County subdivision approval is a standard condition for all set asides to governmental agencies and departments. Furthermore, at the last meeting on July 22, 2005, DOT did not object to the subdivision requirement, and actually represented that it could obtain the County's subdivision approval at much greater speed compared to DLNR's Land Division. However, DOT now claims the subdivision requirement is a major hindrance to executing the set aside within a time frame acceptable to DOT. Condition No. 1 in the above-referenced Board action, states:

- "1. That DOT be the lead agency in working with the Department of Accounting and General Services (DAGS) to process and obtain the subdivision approval by the County for the subject area and shall be required to pay its prorata share, including, but not limited to, the construction of any and all infrastructure required by the County as a condition of the subdivision approval."

The purpose of this requirement was to ensure the property is subdivided in accordance with the County's subdivision standards and requirements, which would: (1) allow the infrastructure and roads to be dedicated to the County; (2) ensure the subdivided lots are all serviced by County standard (and County maintained) infrastructure and utilities; and (3) enhance the use of the subdivided lots by private entities requiring financing, County building permits, etc. The County's Department of Planning and Permitting has stated that an application for subdivision approval would be subject to review for compliance with the Subdivision Ordinance (Chapter 22, ROH) and the Subdivision Rules and Regulations of the City and County of Honolulu (City), which would also require an Environmental Assessment or Impact Statement, Shoreline Certification, Special Management Area (SMA) Permit, and other measures necessary to comply with Land Use Ordinance standards and other subdivision Rules and Regulations (see Exhibit "B"). Staff believes these are all reasonable requirements for use and development of the subject property, but DOT now believes it would be too costly and time consuming to comply with such requirements and would prevent it from utilizing the property to meet its current needs.

Accordingly, DOT is now requesting the Land Board waive its subdivision requirement and require only that the set aside area be determined by survey maps and descriptions drafted in accordance with DAGS Survey Division standards. DOT now claims it would take several years to obtain County subdivision approval for the subject area, and believes that DOT and its prospective users (i.e., the shipping companies) do not require County approved subdivided lots or County standard infrastructure and utilities for their operations. Staff

understands that DOT intends to use the property for a maritime container yard.

DOT submits the following in support of its request for a waiver of the subdivision requirement:

1. Chapter 266-2(b), Hawaii Revised Statutes, authorizes DOT to "plan, construct, operate and maintain any commercial harbor facility in the State... without the approval of county agencies (Exhibit "C");
2. A legal opinion from the Attorney General's Office stipulating that the above exemption from county agency requirements extends to tenants entering into a lease with DOT, where the tenant's development of the land is reasonably necessary or incidental to DOT's government function of planning, construction, operation and/or maintenance of State commercial harbor facilities;
3. A clearance received from the Department of Health, Hazard Evaluation and Emergency Response Office (Exhibit "D"). This no further action letter is limited to the planned maritime container yard;
4. A letter from the Office of Environmental Quality Control (OEQC) exempting DOT from an environmental assessment for the development of a maritime cargo container yard (Exhibit "E"); and
5. A statement and assurance by DOT that it will require each of its lessees to observe and comply with all federal and state laws and other requirements pertaining to development of the property.

In addition, the County's Department of Design and Construction and the County's Department of Environmental Services both support DOT's request to waive the subdivision requirement and believe County subdivision approval would delay critical improvements that may be required for their adjacent wastewater and stormwater treatment facility (see Exhibit "F"). Despite its efforts, DOT was unable to obtain a similar letter of support or concurrence from the County's Department of Planning and Permitting—the department that is tasked with reviewing and approving, among other things, subdivision and building permit applications.

Staff forwarded a request for comments on DOT's request for a waiver of the subdivision requirement and a proposed 8-year lease to Matson Terminal, Inc., to the Division of State Parks, the County's Department of Planning and Permitting (DPP) and the County's Department of Facilities Maintenance (DFM) on May 2, 2006. DFM replied that it had no objection. The other agencies have not submitted a reply as of June 9, 2006. Due to DOT's request that this matter be presented to the Land Board expeditiously, this request was submitted prior to obtaining their comments. However, the above agencies were informed

that this matter would be coming before the Land Board at this meeting, and that the meetings are open to comments from the public and any affected or interested parties.

Staff notes that if the subdivision requirement is waived by the Land Board, the subject property will not be subdivided in accordance with proper subdivision standards, and the infrastructure, roads, and other improvements constructed on the property may not be built to county standards. This would prevent the infrastructure from being dedicated to the County, who, upon acceptance, would normally take on the responsibility of the maintenance of the infrastructure into perpetuity. Thus, if the infrastructure is not dedicated to the County, then the State will be responsible for maintaining all such roads, water, sewer systems, etc., all at the State's expense. The Department of Land and Natural Resources (DLNR) is concerned that it could be forced to bear the burden of maintaining the infrastructure if the property is later returned to DLNR. As stated above, had DLNR's Land Division been allowed to proceed with developing its industrial park, Land Division intended to ensure the property would be subdivided and all infrastructural improvements built to County standards, and ultimately dedicated to the County. Since DOT now seeks a waiver from these requirements which are standard for DLNR's developers and lessees, if the Land Board is inclined to grant DOT a waiver from the subdivision requirement, then the following terms and conditions should be imposed:

1. That DOT be required to repair and maintain all future infrastructural improvements constructed on or servicing the property. If any portion of the property is ever returned to DLNR (upon any withdrawal or cancellation of the set aside), then, at the request of DLNR, DOT shall remove all such future infrastructural improvements hereafter constructed, or alternatively, shall remain responsible for the repair and maintenance of all such future infrastructural improvements hereafter constructed, into perpetuity;
2. That during the term of the set aside to DOT, DOT shall repair and maintain all pre-existing infrastructural improvements situated on or servicing the property; and
3. That DOT be solely accountable and responsible to any of its federal funding agencies that may have an objection to, or a policy against: (a) the use of public lands that are set aside to DOT by other governmental entities; or (b) the return of those public lands back to the State when those lands are no longer needed for harbor or maritime purposes.<sup>1</sup>

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<sup>1</sup> This condition relates to an actual situation the State faced in regards to lands that had been set aside in the past to the DOT, Airports Division ("DOT-A"), for gratis. DOT-A receives substantial grants and funding from the Federal Aviation Authority ("FAA"). As to public lands set aside to the DOT-A for gratis, the FAA has previously taken the position that: (a) other government users of those lands must pay fair market rents; and (b) the return of those lands were prohibited unless the State paid DOT-A fair market value for the lands returned. Such position is absurd considering the lands set aside to DOT-A were public lands, and that DOT-A was not

Furthermore, recommendation No. 5 of the Land Board action on July 22, 2005, item D-5, as amended, states, "5. The Department of transportation shall work with the City and County of Honolulu and accommodate their needs within the subject property for the expansion of their adjacent Wastewater and Stormwater treatment facilities. The purpose of the Executive Order shall be expanded to include the wastewater and stormwater treatment." (Underscore added). This recommendation raised some concern about whether the set aside is to be issued to both DOT and the County, or only to DOT, and whether a wastewater and stormwater treatment facility is consistent with DOT's statutory mission and purpose. Staff has consulted with DOT and believes the Executive Order should simply be issued to DOT for maritime purposes, with the understanding that: (1) should the County Environmental Services need to expand its existing wastewater treatment facility to accommodate a secondary treatment facility, then DOT will return the needed lands back to DLNR for purposes of ultimately being re-set aside to the County for said purposes; and (2) DLNR will issue an extension or new Right-of-Entry to the County's Department of Environmental Services to use a portion of the subject property (see the map attached hereto as Exhibit "G") for a field office and construction staging area while the County completes its upgrades of its existing Sand Island Wastewater Treatment Plant.<sup>2</sup>

Moreover, DOT is also requesting the Land Board's approval for an eight (8) year lease with Matson Terminal, Inc., covering 9.62 acres of the set aside area, subject to the issuance of the set aside to DOT. (Information on DOT's general lease terms is attached as Exhibit "H").

Finally, after reviewing its files, staff noted discrepancies in its description of DOT's set aside area in Exhibit "A" of the previous Board submittal. First, the right-of-entry encumbering a portion of parcel 22 was issued to the "City and County of Honolulu", and not the Board of Water Supply (BWS). Second, the subject area outlined on the exhibit included a 2.045 acre area on the Diamond Head side of parcel 22 that was approved for set aside to the Division of State Parks in exchange for 1.838 acres of land abutting parcel 334 (January 12, 2001, Item D-3). Said area to State Parks is not part of the set aside area to DOT. A corrected,

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required to pay rent or any other consideration for the set aside lands. It is unclear to staff whether there is any similar federal funding agency policy that would apply to DOT-H now, or in the future. Thus, staff believes this condition would be in the best interest in the State, and would not have any impact on DOT-H unless it turns out that there actually is a federal funding policy applicable to DOT-H that is similar to the aforesaid FAA policy applicable to DOT-A.

<sup>2</sup> As background, since November 27, 2000, the County has been occupying 16.021 acres of the subject area on a right-of-entry permit (ROE) for a construction staging area, temporary stockpiling, and dewatering area related to upgrades of their Sand Island Wastewater Treatment Plant. An extension of the ROE was issued on June 28, 2005 and is set to expire on June 30, 2006. The County has recently indicated that modifications to their wastewater facility is nearing completion, and is requesting a second ROE extension to June 30, 2007, covering a smaller (2.526 acre) area for a field office and construction staging area. Because the County is requesting to occupy a lesser portion of the subject property and under different circumstances compared to the existing ROE, staff believes it would be more appropriate for a new ROE should be issued to run through June 30, 2007.

revised map of the set aside area is provided herein as Exhibit "I".

RECOMMENDATION:

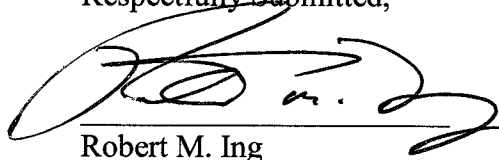
That the Board, subject to the terms and conditions stated above, amend the Board Action of July 22, 2005, item D-5, by:

1. Amending Condition No. 1, as provided in the "Remarks" section of the prior Board action of July 22, 2005, under item D-5, as amended, by waiving only the County subdivision requirement, being further subject to:
  - A. The set aside area being determined by survey maps and descriptions in accordance with DAGS Survey Division standards.
  - B. The requirement for DOT to repair and maintain all future infrastructural improvements constructed on or servicing the property. If any portion of the property is ever returned to DLNR (upon any withdrawal or cancellation of the set aside), then, at the request of DLNR, DOT shall remove all such future infrastructural improvements hereafter constructed, or alternatively, shall remain responsible for the repair and maintenance of all such future infrastructural improvements hereafter constructed, into perpetuity.
  - C. The requirement for DOT to repair and maintain all pre-existing infrastructural improvements situated on or servicing the property during the term of the subject set aside.
  - D. The entire length of existing roadway, extending from Sand Island Access Road, and abutting Tax Map Keys: (1) 1-5-41:22 and 334, being included as part of the set aside area; provided however, the public and other governmental entities shall be allowed to use the roadway for access purposes, at no charge. Said roadway is shown in the attached map labeled Exhibit "I".
  - E. That DOT be solely accountable and responsible to any of its federal funding agencies that may have an objection to, or a policy against: (a) the use of public lands that are set aside to DOT by other governmental entities; or (b) the return of those public lands back to the State when those lands are no longer needed for harbor or maritime purposes.
  - F. The subject property being free of any contamination and restored to a condition acceptable to the Land Board upon a withdrawal from or cancellation of the set aside to DOT.
  - G. Review and approval by the Department of the Attorney General.

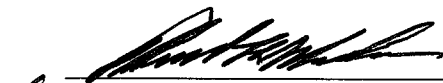
- H. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 2. Deleting Condition No. 2 in its entirety, as provided in the "Remarks" section of the prior Board action of July 22, 2005, under item D-5, as amended, which requires DOT to pay its prorata share of the subdivision costs and the construction costs of any required infrastructure required by the County as a condition of the subdivision approval, including but not limited to improvements to the abutting roadway (parcel 130), being further subject to:
  - A. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 3. Declaring DOT the sole agency to which the set aside was approved, and for maritime purposes only, being further subject to:
  - A. A signed concurrence from the City's Department of Environmental Services.
  - B. A written agreement from DOT that: 1) should the County Environmental Services need to expand its existing wastewater treatment facility to accommodate a secondary treatment facility, then DOT will return the needed lands back to DLNR for purposes of ultimately being re-set aside to the County for said purposes; and (2) that DLNR will issue an extension or new Right-of-Entry to the County's Department of Environmental Services to use a portion of the subject property to be set aside to DOT in relation to work on its adjacent wastewater and stormwater treatment facility, and that DOT is agreeable to possible future rights-of-entry to the County in relation to its wastewater and stormwater treatment facility.
- 4. Authorizing the proposed 8-year lease between the Department of Transportation and Matson Terminal, Inc., being subject to:
  - A. The execution of the set aside to the Department of Transportation.
  - B. Review and approval by the Department of the Attorney General.
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

5. Approving a one (1) year Right-of-Entry Permit to the City and County of Honolulu, from July 1, 2006 through June 30, 2007, for field office and construction staging purposes, covering a 2.526 acre area of the subject set aside area described as the dark triangular area on the attached map included with Exhibit "G", being further subject to:
  - A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time.
  - B. The requirement for the City to remediate the right-of-entry area of all hazardous materials contamination, including but not limited to PCB's, to a level acceptable to the State of Hawaii, Department of Health.
6. Approving staff's revised description of the subject area, attached herein as Exhibit "I".

Respectfully Submitted,

  
Robert M. Ing  
Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

July 22, 2005

**AMENDED**

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 05OD-132

Oahu

Cancellation of a Resolution Designating an Industrial Park; Cancellation of Governor's Executive Order No. 3892 to the Department of Land and Natural Resources for Industrial Park and Business Purposes; Set Aside to the Department of Transportation, Harbors Division for Maritime Purposes; and Issuance of a Management Right-of-Entry; Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:22 and 334.

CONTROLLING AGENCY:

Department of Land and Natural Resources (DLNR)

APPLICANT (Requesting Set Aside):

Department of Transportation, Harbors Division (DOT)

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Sand Island, Honolulu, Oahu, identified by Tax Map Keys: (1) 1-5-041:22 and 334, as shown on the attached map labeled Exhibit A.

AREA:

29.956 acres, more or less.

ZONING:

State Land Use District: Urban  
County of Honolulu CZO: Preservation (P-2)

ITEM D-5

*as amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

*July 22, 2005*

**EXHIBIT "A"**

TRUST LAND STATUS:

Section 5(e) lands of the Hawaii Admission Act (to be verified).

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES \_\_\_\_\_ NO X

CURRENT USE STATUS:

Tax Map Key: (1) 1-5-041:22:

- 1) Governor's Executive Order No. 3892 setting aside 25.878 acres to Department of Land and Natural Resources for industrial park and business purposes;
- 2) Resolution Designating an Industrial Park; State lands situated at Kaholaloa, Sand Island, Honolulu, Oahu, Hawaii, identified as Tax Map Keys: (1) 1-5-041:334 and portions of 6, 22 and 130 (refer to Exhibits B and C).
- 3) Revocable Permit No. S-7328 to Horizon Lines, LLC for parking of containers and trailers purposes (see Exhibit A);
- 4) Land Office Deed No. S-26186 to City and County of Honolulu for sewer outfall purposes;
- 5) Land Office Deed (pending) to Hawaiian Electric Company for perpetual non-exclusive easement for utility purposes; and
- 6) Right-of-Entry to City and County of Honolulu to use 16.021 acres as a construction staging, temporary stockpiling, and dewatering area to upgrade the Sand Island Wastewater Treatment Plant (WWTP), commencing November 27, 2000 and expiring on June 30, 2006 (see Exhibit A).

Tax Map Key: (1) 1-5-041:334:

- 1.) Land Office Deed (pending) to Hawaiian Electric Company for perpetual non-exclusive easement for utility purposes; and
- 2) Resolution Designating an Industrial Park; State lands situated at Kaholaloa, Sand Island, Honolulu, Oahu, Hawaii, identified as Tax Map Keys: (1) 1-5-041:334 and portions of 6, 22 and 130.

PURPOSE OF SET ASIDE:

Maritime purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

REMARKS:

On January 17, 2002, the Governor executed Governor's Executive Order No. 3892 (EO3892), setting aside 25.878 acres of State land, identified as TMK: (1) 1-5-041:22, to the Department of Land and Natural Resources for industrial park and business purposes. A 2003 Legislative Bureau Report to the State Legislature (LRB Report No. 5, 2003, page 24) supported the Department's findings that there was not enough commercial and industrial zoned land in the marketplace and that an industrial park and center for business is the highest and best use for the two subject parcels. This was further supported by the latest market report by Colliers Monroe Friedlander, a local commercial real estate firm, confirming that there continues to be a shortage of available industrial space on Oahu. As one of the primary industrial areas on Oahu, staff projected that a master lease for a Sand Island industrial park would generate between \$3 and \$3.3 million in annual lease rent revenues for the State.

At its meeting on September 12, 2003, agenda item D-14, the Land Board approved the designation of approximately 45 acres of Sand Island property, including the subject parcels, as an industrial park and subsequently signed a resolution to that effect (see Exhibits B and C). Staff sought Legislative approval to designate the area as an industrial park but the initiative was not approved.

Meanwhile, the Hawaii Harbor Task Force (HHTF) is currently responding on a priority basis to meet the demand for more cargo yard space to accommodate the growing amount of cargo being processed through our seaports. HHTF determined that lands located across Sand Island Parkway were needed to expand the existing cargo facilities. HHTF is therefore requesting the Land Board to cancel EO3892, and set aside 23.569 acres from parcel 22 to DOT in addition to all of parcel 334, for a total of 29.956 acres (refer to Exhibit E). As stated in their request, HHTF intends to have DOT immediately utilize the subject lands to provide container yard operations for major shipping lines. The immediate improvements to the land for this purpose would include grading, asphalt, security lighting and security fencing will be paid for by the prospective users.

Staff previously sought ways to accommodate the needs of shipping companies and looked into a possible lease arrangement for the subject land. However, compliance with HRS Chapter 343's environmental review requirements, the property's P-2 zoning, and other County regulations, (i.e. SMA regulations) precluded the immediate occupancy desired by the shipping companies.

The maritime users have attempted over the past several years to obtain short term leases from DLNR for the subject parcels since the usage requires capital improvements to the property that cannot be justified by the users without a minimum term lease. The DOT's statutory maritime authorities permit it to issue such leases.

DOT's staff advises that the provisions of Chapter 266-2 (b), Hawaii Revised Statutes (HRS), enables their immediate use of the subject lands for maritime purposes without the same restrictions DLNR has with respect to the public auction requirements of Chapters 171-14 and 171-16, HRS, and without having to comply with obtaining the approval of county agencies. Specifically, Chapter 266-2 (b) states, *"Notwithstanding any law or provision to the contrary, the department of transportation is authorized to plan, construct, operate, and maintain any commercial harbor facility in the State, including, but not limited to, the acquisition and use of lands necessary to stockpile dredged spoils, without the approval of county agencies."* Staff has not obtained an opinion from the Attorney General's Office regarding the interpretation of this statute, or the impact leases may have on State lands without obtaining County subdivision approvals, and is uncertain as to what defines a "harbor facility", but will defer this matter to the Land Board for consideration.

Staff has diligently worked towards the development of an industrial park on the subject parcels. While market data clearly shows a demand for such industrial space, the location of the parcels adjacent to harbor frontage is a limited resource that is sorely needed by DOT to keep pace with the increasing demands for maritime operations.

The Department of Planning and Permitting has submitted comments pertaining to the subject request. The comments are attached herewith as part of Exhibit "D".

The City and County of Honolulu currently has a right-of-entry to use 16.021 acres of parcel 22 for use as a construction staging, temporary stockpiling, and dewatering area for upgrades to the Sand Island Waste Water Treatment Plant (WWTP) on its abutting parcel (parcel 5). At its meeting on June 24, 2005, under agenda Item D-7, the Land Board approved an extension of this right-of-entry to June 30, 2006, partly because the County discovered contaminants on their WWTP property, and indicated that parcel 22 may have been exposed. The extension will provide the County additional time necessary to complete their construction work and any necessary remediation.

Interest in the subject parcels from both the public and private sectors remains high. The

County's Department of Environmental Services has expressed an interest in obtaining a set aside for their existing 16.021 acre revocable permit area to expand their WWTP facility. Meanwhile, the Aloha Tower Development Corporation and the Hawaiian Electric Company (HECO) are inquiring about the use of parcel 334 as a site to relocate the existing power plant adjacent to the Aloha Tower Market Place.

Based on the foregoing, while staff is reluctant to cease its efforts to develop an industrial park on the subject parcels, the strong demand for maritime usage appears to outweigh such development by DLNR. Therefore, it is recommended that the Land Board approve this request, subject to the following terms and conditions:

- 1) That DOT be the lead agency in working with the Department of Accounting and General Services (DAGS) to process and obtain the subdivision approval by the County for the subject area and shall be required to pay its prorata share, including, but not limited to, the construction of any and all infrastructure required by the County as a condition of the subdivision approval.
- 2) That DOT agrees that it shall be required to pay its prorata share of the subdivision costs and the construction costs of any required infrastructure required by the County as a condition of the subdivision approval, including but not limited to improvements to the abutting roadway (parcel 130).
- 3) That DOT coordinates with DAGS to provide survey maps and descriptions according to State DAGS standards per the above requirement.
- 4) That DOT share the prorata responsibility of maintaining the roadway, identified as a portion of parcel 130, extending from Sand Island Parkway and situated between parcels 22 and 334. Said maintenance responsibilities shall, at the very least, reflect their level of use of said roadway. DOT shall also ensure that all users/occupants of the adjacent properties and their successors have full access over and across said roadway; and
- 5) That DOT is required to remediate any environmental contamination to the satisfaction of the State Department of Health in the event the lands are to be returned to DLNR.

Staff requested agencies to submit comments by July 8, 2005, so this request could be addressed at this Land Board meeting. The Department of Health has no objection provided that wastewater generated on the property is treated and disposed of in accordance with their Administrative Rules, Chapter 11-62.

The County's Environmental Services Department commented on their need to expand their Sand Island Waste Water Treatment Plant and has requested a set aside of their

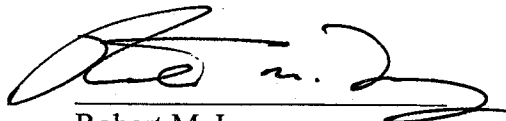
July 22, 2005

existing 16.021 acre right-of-entry area on parcel 22. The County's request is attached herewith as Exhibit "E". No other government agency has objected or submitted comments to staff as of July 8, 2005.

RECOMMENDATION: That the Board:

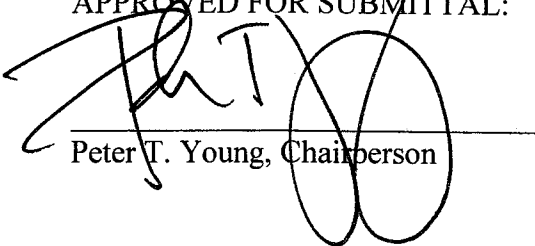
1. Approve the cancellation of the Resolution Designating an Industrial Park, which concerns the subject area and includes Tax Map Key parcels: (1) 1-5-041: 334 and portions of 6, 22 and 130, as described in Exhibits B and C.
2. Approve recommending to the Governor the issuance of an executive order canceling Governor's Executive Order No. 3892 to the Department of Land And Natural Resources for industrial park and business purposes;
3. Approve recommending to the Governor the issuance of an executive order setting aside the subject lands to the Department of Transportation, Harbors Division for maritime purposes; and
4. Approve the issuance of a management right-of-entry permit to the Department of Transportation, Harbors Division, which concerns the subject area.

Respectfully Submitted,



Robert M. Ing,  
Land Agent

APPROVED FOR SUBMITTAL:

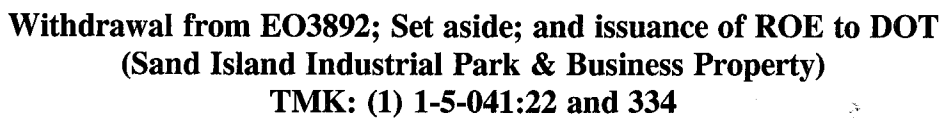
  
Peter T. Young, Chairperson

July 22, 2005 Board Meeting, Item D-5:

5. **Cancellation of a Resolution Designating an Industrial Park; Cancellation of Governor's Executive Order No. 3892 to the Department of Land and Natural Resources for Industrial Park and Business Purposes; Set Aside to the Department of Transportation, Harbors Division for Maritime Purposes; and Issuance of a Management Right-of-Entry; Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:22 and 334. (ODLO/Robert)**

**APPROVED AS AMENDED.** The Board amended the subject submittal by adding the following conditions to the recommendations:

5. The Department of Transportation shall work with the City and County of Honolulu and accommodate their needs within the subject property for the expansion of their adjacent Wastewater and Stormwater treatment facilities. The purpose of the Executive Order shall be expanded to include the wastewater and stormwater treatment.
6. The Executive Order shall contain a provision for review of the Executive Order in 5 years by the Department of Land and Natural Resources, to confirm the continuing need for the property by the Department of Transportation for maritime purposes.
7. The 5 conditions listed on "page 5" of the submittal shall be incorporated as additional pre-conditions or conditions of the EO as appropriate.

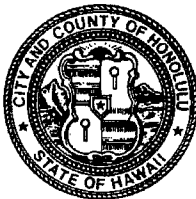




DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 523-4432 • FAX: (808) 527-6743  
DEPT. WEB SITE: [www.honolulu.gov](http://www.honolulu.gov) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

MUFI HANNEMANN  
MAYOR



HENRY ENG, FAICP  
DIRECTOR

DAVID K. TANOUÉ  
DEPUTY DIRECTOR

July 5, 2005

2005—Subd. Misc. (MS)

Mr. Peter T. Young, Chair  
Department of Land and Natural Resources  
State of Hawaii  
P. O. Box 621  
Honolulu, Hawaii 96809

Attention: Mr. Robert M. Ing, Land Division

SUBJECT: Request for Set Aside and Management Right-of-Entry for Maritime-related  
Purposes, Sand Island, TMK: 1-5-41: 6, 22 and 334

In response to your request for comments dated June 23, 2005, the proposal involves filing a subdivision application with this Department and therefore, will be subject to review for compliance with the Subdivision Ordinance (Chapter 22, ROH) and the Subdivision Rules and Regulations of the City and County of Honolulu.

As part of the subdivision application, the subdivider will need to address compliance with the following:

- Environmental Assessment or Impact Statement (Chapter 343, HRS).
- Special Management Area requirements (Chapter 25, ROH).
- Shoreline Certification.
- Land Use Ordinance standards (Chapter 21, ROH).
- Street standards of the Subdivision Rules and Regulations. **Note:** Roadway Lot D does not appear to follow standards.
- Other City standards and regulations for subdivision and construction of improvements pertaining to this project.

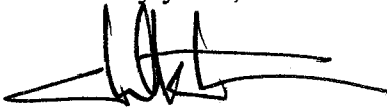
Please be aware that contrary to the statement in the DOT memorandum dated May 18, 2005, our Department has not yet received a subdivision application for this project.


**EXHIBIT "B"**

Mr. Peter T. Young, Chair  
2005—Subd. Misc. (MS)  
Page 2

Should you have any questions, please contact Mr. Mario Siu-Li of my staff at 523-4247.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'HENRY ENG', with a long horizontal flourish extending to the right.

 HENRY ENG, FAICP  
Director of Planning and Permitting

HE: ms

**§266-2 Powers and duties of department.** (a) The department of transportation shall:

(1) Have and exercise all the powers and shall perform all the duties which may lawfully be exercised by or under the State relative to the control and management of commercial harbors, commercial harbor and waterfront improvements, ports, docks, wharves, piers, quays, bulkheads, and landings belonging to or controlled by the State, and the shipping using the same;

(2) Have the authority to use and permit and regulate the use of the commercial docks, wharves, piers, quays, bulkheads, and landings belonging to or controlled by the State for receiving or discharging passengers and for loading and landing merchandise, with a right to collect wharfage and demurrage thereon or therefor;

(3) Subject to all applicable provisions of law, have the power to fix and regulate from time to time rates and charges for:

(A) Services rendered in mooring commercial vessels;

(B) The use of commercial moorings belonging to or controlled by the State;

(C) Wharfage or demurrage;

(D) Warehouse space, office space, and storage space for freight, goods, wares and merchandise; and

(E) The use of derricks or other equipment belonging to the State or under the control of the department;

(4) Make other charges including toll or tonnage charges on freight passing over or across docks, wharves, piers, quays, bulkheads, or landings;

(5) Appoint and remove clerks, harbor agents and their assistants, and all such other employees as may be necessary, and to fix their compensation;

(6) Adopt rules pursuant to chapter 91 and not

**EXHIBIT "C"**

inconsistent with law; and

(7) Generally have all powers necessary to fully carry out this chapter.

(b) Notwithstanding any law or provision to the contrary, the department of transportation is authorized to plan, construct, operate, and maintain any commercial harbor facility in the State, including, but not limited to, the acquisition and use of lands necessary to stockpile dredged spoils, without the approval of county agencies.

All moneys appropriated for commercial harbor improvements, including new construction, reconstruction, repairs, salaries, and operating expenses, shall be expended under the supervision and control of the department, subject to this chapter and chapter 103D.

All contracts and agreements authorized by law to be entered into by the department shall be executed on its behalf by the director of transportation.

(c) The department shall prepare and submit annually to the governor a report of its official acts during the preceding fiscal year, together with its recommendations as to commercial harbor improvements throughout the State. [L 1911, c 163, §3; am L 1913, c 150, §1; am L 1915, c 169, §2; ratified, March 28, 1916, c 54, 39 Stat 39; am imp July 9, 1921, c 42, §315, 42 Stat 120; 48 U.S.C. §545; RL 1925, §834; RL 1935, §1732; RL 1945, §4983; RL 1955, §112-3; am L Sp 1959 2d, c 1, §26; am imp L 1961, c 42, §1; HRS §266-2; am L 1978, c 231, §3; am L 1980, c 161, §2; am L 1991, c 34, §1 and c 272, §9; am L Sp 1993, c 8, §54]

#### **Cross References**

Regulation of pilots, see chapter 462A.

#### **Attorney General Opinions**

Expenditures for produce refrigeration systems at harbors are for a public purpose. Att. Gen. Op. 62-12.

#### **Case Notes**

Power to impose and collect tolls and tonnage charges. 31 H. 372.

Power to contract, etc.: limitation on power of board to bind the State. 43 H. 28.

[Previous](#)

[Vol05\\_Ch0261-0319](#)

[Next](#)

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File: EHA/HEER Office  
2005-609 DB

November 29, 2005

Ms. Sandra Pfund  
Department of Transportation  
Harbors Division, Pier 10 Terminal  
600 Fort Street, 2<sup>nd</sup> Floor  
Honolulu, Hawaii 96813

**Subject: No Further Action Letter for Sand Island Property**  
**TMK Nos. 1-5-41:334 and 1-5-41:22**

Dear Ms. Pfund:

I am writing in regard to your request that the Department of Health (DOH) determine whether TMK Nos. 1-5-41:334 and 1-5-41:22 on Sand Island can be used as a maritime container yard without presenting significant risk to human health or the environment. We appreciate your interest in assuring that the public and the environment are protected from potential exposure to contaminants on the property. As discussed below, we concur that the proposed redevelopment of the site can proceed without further actions at this time.

We have reviewed the *Technical Memorandum: Screening Level Risk Evaluation of Sand Island Park*, dated November 11, 2005, prepared by AMEC Earth and Environmental. This evaluation examined the available sampling data and concluded that the concentrations of contaminants and the risks they present are below risk-based action levels for potential worker exposure, even without the installation of a concrete surface over most of the property. The DOH concurs with this conclusion.

While contaminants on the property will not present significant risks for its intended use, the report correctly notes that a comprehensive assessment of potential environmental concerns has not been carried out at the site. Additional health risk concerns that should be evaluated if property use changes include exposure of the general public and the intrusion of subsurface vapors into future buildings. Reported levels of some contaminants in soil also suggested potential groundwater and surface water quality concerns if significant leaching occurs. Based on our review of the available site data, the proposed use of the site, and the apparent limited area of affected soil, however, DOH is not recommending further evaluation of these concerns at this time. A more comprehensive assessment of the potential environmental concerns may be warranted if use of the property and surrounding area changes in the future.

Thank you for making the effort to assure that the planned development of the property is done in a safe manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith E. Kawaoka", is written over a horizontal line.

KEITH E. KAWAOKA, D.Env., Manager  
Hazard Evaluation and Emergency Response Office

**EXHIBIT "D"**

bc: S. Pfund  
Sent by Jay.

C: C.900

GENEVIEVE SALMONSON  
DIRECTOR

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

235 SOUTH BERETANIA STREET  
SUITE 702  
HONOLULU, HAWAII 96813  
TELEPHONE (808) 586-4185  
FACSIMILE (808) 586-4186  
E-mail: oeqc@health.state.hi.us

January 23, 2006

Mr. Barry Fukunaga, Deputy Director of Harbors  
Department of Transportation  
Harbors Division  
79 S. Nimitz Highway  
Honolulu, Hawaii 96813-4898

Dear Mr. Fukunaga:

Subject: Sand Island Container Yard Annex

This is in response to your letter of December 30, 2005 regarding the Sand Island Container Yard Annex project.

After reviewing the information you presented, OEQC believes that the proposed improvements fall within the scope of work described in the Department of Transportation's approved exemption list.

The above actions generally fall under exemption class 4 number 1 and exemption class 6 number 8 of DOT's approved exemption list dated November 15, 2000.

Accordingly, we believe that the Department of Transportation has authority to declare the actions described above as exempt from the requirement to prepare an environmental assessment.

Sincerely,

*Genevieve Salmonson*  
Genevieve Salmonson  
Director

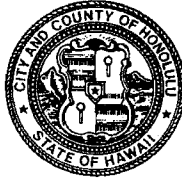
EXHIBIT "E"

54929

**DEPARTMENT OF DESIGN AND CONSTRUCTION  
CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 11<sup>TH</sup> FLOOR  
HONOLULU, HAWAII 96813  
Phone: (808) 523-4564 • Fax: (808) 523-4567  
Web site: [www.honolulu.gov](http://www.honolulu.gov)

MUFI HANNEMANN  
MAYOR



March 10, 2006

The Honorable Peter T. Young, Chairperson  
Board of Land and Natural Resources  
P. O. Box 621  
Honolulu, Hawaii 96809

Dear Mr. Young:

Subject: Cancellation of a Resolution Designating an Industrial Park;  
Cancellation of Governor's Executive Order No. 3892 to the  
Department of Land and Natural Resources for Industrial Park  
and Business Purposes; Set Aside to the Department of  
Transportation, Harbors Division, for Maritime Purposes; and  
Issuance of a Management Right-of-Entry; Sand Island,  
Honolulu, Oahu, Tax Map Key: (1) 1-5-41:22 and 334

We are writing in support of the request by the Department of Transportation - Harbors Division (DOT-H) to waive the subdivision requirement imposed by the Board of Land and Natural Resources (BLNR) as a condition of the Executive Order on the subject parcels.

On July 22, 2005, the BLNR approved the above-stated request by DOT-H, under agenda item D-5. The BLNR approval required, among other things, that the DOT-H obtain subdivision approval from the County as a prerequisite for issuance of an Executive Order of the subject parcels to DOT-H. We understand that DOT-H needs to enter into a lease with Matson Navigation Company as soon as possible to address the serious shortage of cargo storage space and the subdivision process will take several years and will be very costly to all the affected parties. We therefore recommend a metes and bounds survey to identify the proposed land parcels in lieu of the long and cumbersome subdivision process.

We are very concerned about the delay that would be involved in subdividing the parcels and putting the E.O. into effect as we have an immediate need for 6 acres for construction base-yard purposes. In your enclosed letter of August 2, 2005, to DOT Director Rodney Haraga, Item No. 5 requires the DOT to work with us to accommodate the expansion of the adjacent wastewater and stormwater treatment facilities. In the longer term, if our Sand Island NPDES Waiver permit is not reissued, we will need approximately 15 acres for secondary treatment facilities.

**EXHIBIT "F"**

RECEIVED  
06 MAR 14 A8:50  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII  
EUGENE C. LEE, P.E.  
DEPUTY DIRECTOR  
WW.A 06-001

RECEIVED  
LAND DIVISION  
2006 MAR 16 A 11:17  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

The Honorable Peter T. Young, Chairperson

Page 2

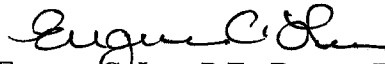
March 10, 2006

Thank you for your consideration of the DOT-H's request to waive the subdivision requirements. If there are any questions, please contact David Nagamine, Department of Environmental Services, at 692-5150 or Eldon Franklin, Department of Design and Construction, at 527-5040.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric S. Takamura".

Dr. Eric S. Takamura, P.E., Director  
Department of Environmental Services

A handwritten signature in black ink, appearing to read "Eugene C. Lee".

Eugene C. Lee, P.E., Deputy Director  
Department of Design and Construction

Enclosure



New ROE Area  
Requested by  
County

- 2.526 ACRES  
SHARED CONSTRUCTION STAGING AREA FOR FIELD OFFICE  
& PARKING USE BY ALL CONTRACTORS ON THE WWTP SITE
- 13.495 ACRES  
CONSTRUCTION STAGING AREA FOR NEW HEADWORKS & PRIMARY  
CLARIFIERS 7 & 8 PROJECT. TO BE RETURNED TO DLNR.
- 6 ACRES  
CONSTRUCTION STAGING AREA, TO BE REQUESTED IF  
PROJECT PROCEEDS, FOR PRIMARY EXPANSION PROJECT.

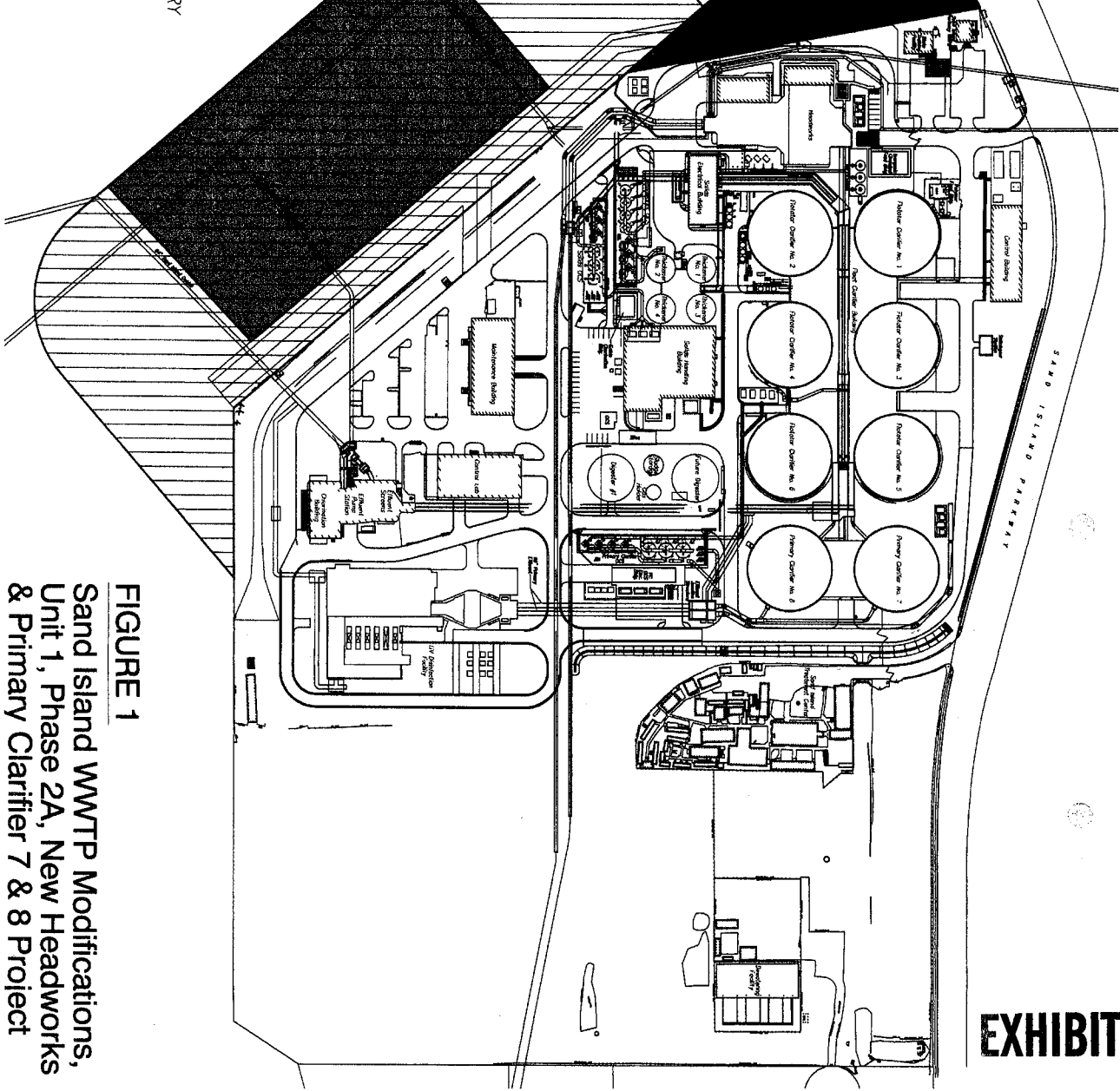


FIGURE 1

Sand Island WWTP Modifications,  
Unit 1, Phase 2A, New Headworks  
& Primary Clarifier 7 & 8 Project

MARCH 24, 2006

PAGE 3

construct, operate and maintain harbors throughout the State without the approval of county agencies. The legal opinion further confirms that the exemption from county agency approvals may be extended to tenants under lease to DOT-H where the tenant's development of the land is reasonably necessary or incidental to the DOT-H's government function of planning, construction, operation and/or maintenance of State commercial harbor facilities. See Exhibit 3.

- 3) The DOT-H obtained the following state clearances for the development of the cargo yard facility:
  - a. No Further Action Letter from the Department of Health, Hazard Evaluation and Emergency Response Office, dated November 29, 2005. (Exhibit 4)
  - b. Acknowledgement of exemption from the Office of Environmental Quality Control (OEQC) environmental assessment requirements for the scope of work contemplated for the development of a maritime cargo container yard. (Exhibit 5)
- 4) The lessee shall be responsible for observance of all applicable federal and state laws and requirements pertaining to development of the property, including but not limited to, National Pollutant Discharge Elimination System (NPDES) permit from the state Department of Health and observance of state shoreline management laws under Chapter 205-A, Hawaii Revised Statutes.

LEASE TO MATSON TERMINALS, INC.

Subject to favorable consideration of the above, and upon issuance of an Executive Order to DOT-H, your approval is respectfully requested for issuance of a lease by direct negotiation, in a form substantively shown in Exhibit 6 and subject to final approval as to form by the Deputy Attorney General, as follows:

APPLICANT:

Matson Terminals, Inc., a Hawaii corporation, whose business address is 1411 Sand Island Parkway, Honolulu, Hawaii 96819-4322.

LEGAL REFERENCE:

Sections 171-11, 171-16c, 171-17, 171-33, 171-35, 171-36, 171-41, and 171-59(b), Hawaii Revised Statutes.

LOCATION:

Portion of Tax Map Key: (1) 1-5-041:22, more particularly delineated and shown on Exhibit 7.

**EXHIBIT "H"**

AREA:

9.620 acres of land as shown on the survey map prepared by Control Point Surveying, Inc., attached hereto as Exhibit 7 and described in metes and bounds in Exhibit 8.

CHARACTER OF USE:

Cargo container handling yard for containers and roll on/roll off (ro/ro) cargo.

LEASE TERM:

Eight (8) years, to commence on the date determined by the Director of Transportation. The term includes a one-year construction period at gratis, a 5-years fixed period, and a two-year option period at a 15% increase in the rental amount, subject to certain withdrawal conditions in favor of the Lessor.

ANNUAL LEASE RENT:

\$71,240 per month.

The rental value is established by an appraisal completed by ACM Consultants, Inc. dated October 1, 2005.

MINIMUM VALUE OF IMPROVEMENTS:

\$1.4 Million estimated for asphalt paving.

REMARKS:

The applicant desires to use the premises to: (a) load, unload, receive, and deliver items of maritime cargo; (b) temporarily store maritime cargo prior to its being loaded on ocean-going ships or prior to its delivery within the State; (c) park vehicles as reasonably necessary or incidental to the maritime cargo operations conducted by the applicant on the premises; and (d) with the lessor's approval, other operations or activities that are reasonably necessary or incidental to the applicant's maritime cargo operations. See Article III.

The Lessee has requested the following modifications to the standard Harbors Lease:

In consideration of a waiver of rent for the first year of the lease term, the applicant will construct improvements on the premises that will become the property of the lessor at the end of the lease term. See Article V.B and VI.F.

The applicant wants the "no nuisance" provision of the lease to be modified to permit the production of noise, smoke, or odors from the premises so long as such

does not violate any law or government order or is in excess of what is typically produced by similar maritime cargo operations. See Article VIII.

Rather than perform an environmental investigation of the premises, the applicant accepts the lessor's environmental report as showing the condition of the premises at the commencement of the lease term. See Article VI.C. However, the applicant does not want to be liable or responsible for the discharge or release of hazardous substances where it can provide evidence satisfactory to lessor that the hazardous substances were on the premises prior to the commencement of the lease and the discharge or release did not result from the applicant's or its guests' negligent, intentional, or wrongful conduct. See Article XIII.C.2.

Because of the nature of its maritime cargo operations, the applicant will be bringing hazardous substances onto the premises, e.g., maritime cargo that constitutes or contains hazardous substances, vehicles and gasoline and fuels for such vehicles. The applicant does not want to have to constantly notify the lessor of any hazardous substances that it brings on the property that are part of its intended use of the premises. See Article XIII.C.2.b and XIII.C.2.c.

The applicant does not want to be in violation or breach of the lease for failures to perform or observe non-material agreements, terms, or conditions of the lease. See Article XVIII.A.11.

The applicant wants to be able to use a letter of credit instead of a performance bond as security for performance of the lease. See Article XXV.

The applicant does not want to be subject to a lessor's lien on any personal property that may be on the property because there would be little such property other than personal property belonging to its customers or necessary for the transportation of such personal property to its customers. See Article XXVII.

The applicant wants to be able to assign the lease to its parent company (Matson Navigation Company) without the lessor's prior written consent. See Article XXVIII.

The applicant does not want to agree to a lease provision that provides that the officers and employees of the lessor shall not be charged personally with any liability under the lease unless the lessee's officers and employees are similarly protected. See Article XXXVII.

#### RECOMMENDATION:

That the Board:

1. Find that the proposed lease encourages competition within the maritime and/or maritime-related industry.

2. Approve the proposed lease by direct negotiation covering the subject area for the stated purpose, with the following terms and conditions:
  - a. Standard breach of lease provision that provides that the lessee is in breach of the lease for any failure to keep, perform, and/or observe any agreement, promise, covenant, term or condition of the lease.
  - b. Standard lessor's lien provision, modified so that the lessor has a lien, to the extent permitted by law, subject to any personal property lease agreements of the lessee.
  - c. Lease provision that provides that the lessor's officers and employees shall not be charged personally with any liability under the lease without similar protection to the lessee's officers and employees.
  - d. Other terms and conditions as may be prescribed or agreed to by the Director of Transportation.

Thank you very much for your cooperation and assistance on this matter. If you have any questions regarding this submittal, please call Barry Fukunaga, Harbors Division Deputy Director at 587-3651.

Attachments

